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No. 83-659

In the Supreme Court of the United States

OCTOBER TERM, 1983

FREDERICK PAUL AND AILEEN M. PAUL, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

REX E. LEE
Solicitor General

GLENN L. ARCHER, JR.
Assistant Attorney General

RICHARD FARBER
DOUGLAS G. COULTER
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Section 21 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1620, provides that revenues originating from the Alaska Native Fund shall be exempt from federal income tax "at the time of receipt by * * * [an] individual Native through dividend distributions or in any other manner." The question presented is whether this Section operates to exempt from tax amounts received by a Native attorney, not as a distribution in settlement of Native land claims, but as compensation for legal services rendered.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A8) is not officially reported. The opinion of the Tax Court (Pet. App. B1-B33) is reported at 77 T.C. 755.

JURISDICTION

The judgment of the court of appeals was entered on July 21, 1983 (Pet. App. A9). The petition for a writ of certiorari was filed on October 19, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner Frederick Paul[1] is an attorney who specializes in Indian law. He is one quarter Tlingit Indian, making him a "Native" within the meaning of the Alaska Native Claims

[1]Petitioner Aileen M. Paul is married to Frederick and is a party to this case solely by virtue of having filed a joint return with her husband for the tax year at issue.

Settlement Act (ANCSA), 43 U.S.C. (& Supp. V) 1601 *et seq.* (Pet. App. B3). In 1966 petitioner agreed to represent a group of Alaska Natives seeking settlement of land claims against the United States. This work extended over five years and involved matters settled by the passage of ANCSA. Petitioner was awarded compensation in the amount of $275,095 for these services by the Court of Claims pursuant to 43 U.S.C. 1619. Pet. App. B3-B4. This compensation was paid in 1975 directly from the Alaska Native Fund out of "money reserved [therein] for the payment of attorney and other fees." 43 U.S.C. 1605(c).

Petitioner did not include this compensation in his 1975 gross income for federal tax purposes (Pet. App. B4). Rather, he attached to his return a statement contending that the income was exempt from tax under 43 U.S.C. 1620(a), which provides as follows:

> Revenues originating from the Alaska Native Fund shall not be subject to any form of Federal, State, or local taxation at the time of receipt by a Regional Corporation, Village Corporation, or individual Native through dividend distributions or in any other manner. This exemption shall not apply to income from the investment of such revenues.

The Commissioner determined that Section 1620(a) did not apply to compensation for personal services and that the $275,095 was includable in petitioner's 1975 gross income. Petitioner sought redetermination of the resulting deficiency in the Tax Court, which upheld the Commissioner's proposed assessment. The Tax Court acknowledged that Section 1620(a), "[r]ead literally and wholly apart from certain other provisions of the ANCSA," appeared to exempt from taxation all monies paid to a Native from the Alaska Native Fund (Pet. App. B14). The court concluded, however, that a literal reading of the Section was unsupportable in light of the purposes of the statute, its legislative

history, and the operation of other ANCSA provisions (*id.* at B15). Congress's rationale for the tax exemption provided in Section 1620(a), the court noted, was that payments from the Alaska Native Fund "represent compensation for the extinguishment of Native land claims" and that such amounts would not constitute taxable income under general tax principles — a rationale that "does not apply to compensation for legal services" (Pet. App. B28). The court pointed out that petitioner's argument was likewise at odds with the statute's overall structure, noting that ANCSA's "special provisions for the payment of attorney fees * * * are entirely separate from the scheme for general distribution of the Alaska Native Fund" (*id.* at B22). The Tax Court accordingly concluded that, while "Congress intended that all amounts actually or constructively received by Native people for the settlement of land claims would be exempt from taxation," there was "nothing in the Act to indicate a similar intent with respect to amounts received by an attorney for legal services simply because he happened to be a Native" (*id.* at B26).

The Ninth Circuit unanimously affirmed, substantially for the reasons set forth by the Tax Court (Pet. App. A1-A8). The taxability of petitioner's income, it held, was supported both by the fact that "[p]ayments for legal services under section 1619 may be made to non-Indians as well as Alaska Natives" and by the fact that petitioner "did not receive the [income] as part of a distribution to qualified Natives" (*id.* at A7). Petitioner's compensation for legal services thus fell "outside the scope of the tax exemption in section 1620(a)" (*ibid.*).

ARGUMENT

The decisions below are correct. Petitioners do not allege (nor is there) a conflict among the circuits on the narrow question of statutory interpretation that is presented here. There is no basis for review by this Court.

Section 61 of the Internal Revenue Code of 1954 subjects income "from whatever source derived" to the federal income tax. The income of Indians, like that of other individuals, is thus taxable "unless an exemption from taxation can be found in the language of a Treaty or Act of Congress." *Commissioner* v. *Walker*, 326 F.2d 261, 263 (9th Cir. 1964). See *Squire* v. *Capoeman*, 351 U.S. 1, 6 (1956).

Petitioner's contention that the requisite exemption is provided by 43 U.S.C. 1620(a) was properly rejected by the courts below. The legislative history clearly shows that this exemption was designed to cover amounts paid from the Alaska Native Fund under Section 1605(c) in a general distribution to Natives (either directly or indirectly through Native corporations) in settlement of their land claims. There is no suggestion whatever in the statute or in its legislative history that the exemption was meant to cover amounts specially set aside and paid under Section 1619 (either to a Native or to anyone else) as compensation for legal services rendered.

The tax exemption for amounts received by individual Natives from the Alaska Native Fund was added in the Senate by substituting the language of S. 35, 92d Cong., 1st Sess. (1971), for that of the House Bill. The Senate Report accompanying S. 35 explained (S. Rep. 92-405, 92d Cong., 1st Sess. 175-176 (1971)) that a tax exemption for these amounts was appropriate because, as compensation for settlement of Native land claims, the payments in essence represented a return of capital rather than income:

> Section 27 [of the Senate amendment] provides for the taxation or exemption from taxation of funds * * * granted to the Natives under this Act according to the general principle that the resources hereby made available represent compensation for the extinguishment of Native land claims by the operation of this Act,

> and that in accordance with general principles of taxation such compensation does not constitute taxable income.

As the Tax Court said (Pet. App. B28), this return-of-capital rationale makes no sense as applied to amounts received as compensation for personal services.

Petitioner attempts to avoid the clear implication of this language by pointing out (Pet. 35-45) that the Conference Report did not adopt the Senate amendment verbatim but made "some deletions and modifications" in it. H.R. Conf. Rep. 92-746, 92d Cong., 1st Sess. 46 (1971). These "deletions and modifications," however, have nothing to do with the question presented here. The Conference Report begins its discussion of the tax exemption by stating that Section 1620(a) as enacted "provides for the tax treatment to be accorded lands and revenues granted by this Act *for the settlement of the Alaska Native Claims*" (*ibid.* (emphasis added)). The final version of Section 1620(a), therefore, like the Senate version, clearly contemplates that "[r]evenues originating from the Alaska Native Fund" means "amounts received in consideration of Native land claims," and that a tax exemption will be available only for such amounts.

In these circumstances, the courts below properly held that, although Section 1620(a) could be applied literally to support the exemption claimed by petitioner, a literal application was not within the intent of Congress. This Court early noted that "a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor the intention of its makers." *Church of the Holy Trinity* v. *United States*, 143 U.S. 457, 459 (1892). Accord, *Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1, 9-10 (1976).

Petitioners' reliance (Pet. 26-32, 50-54) on various canons of statutory construction — including the principle that ambiguities in statutes governing the rights of Native Americans should be resolved in their favor — is misplaced. These canons are not substantive rules of law but are merely aids in ascertaining Congress's intent. Here, the courts below properly examined the purpose, structure, and legislative history of ANCSA and concluded that Congress did not intend to afford tax exemption to compensation an attorney receives for his services, merely because that compensation happens to have been paid out of the Alaska Native Fund.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

GLENN L. ARCHER, JR.
Assistant Attorney General

RICHARD FARBER
DOUGLAS G. COULTER
Attorneys

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